

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

WIZKIDS CREATIONS CO.,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
SEPTA TRANSPORTATION, <u>et al.</u> ,	:	
	:	NO. 02-3249
Defendants.	:	

MOTION OF DEFENDANT SEPTA TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO THE
COURT'S STANDING ORDER AND RULE 12(b)(6)

Defendant, Southeastern Pennsylvania Transportation Authority ("SEPTA"), by its attorneys, comes and files this Motion to Dismiss against plaintiff, WizKids Creations Company ("WizKids"), for the following reasons:

1. Plaintiff, WizKids, is, in fact, the registered fictitious name of Larry Hackney ("Hackney"), an adult individual.
2. Plaintiff brings the present action against defendants alleging infringement of Hackney's alleged copyright "Flying Carpet."
3. By Orders dated April 28, 1992, and April 25, 1997, Hackney was prohibited, absent prior Court approval, from bringing any claims for copyright infringement against any defendant, for claims arising out of the "Flying Carpet." See Hackney v. Sands Hotel & Casino et al., 1992 U.S. Dist. LEXIS 6581 (E.D. Pa. 1992); Hackney v. Lehrer McGovern Bovis of Pennsylvania, 1997 U.S. Dist. LEXIS 5738 at *1 (E.D. Pa.), aff'd, 1997 U.S. App. LEXIS 33435 (3d Cir. 1997).
4. Hackney did not obtain leave of Court prior to filing

this Complaint.

5. Pursuant to the Courts 1992 and 1997 Orders, Hackney's failure to obtain leave of Court prior to the commencement of this action subjects him to appropriate sanctions.

6. Even if the Court were to address plaintiff's Complaint, it fails to state a claim for which relief can be granted pursuant to Rule 12(b)(6), F.R.C.P., as SEPTA's El is not "substantially similar" to Hackney's "Flying Carpet."

7. In the unlikely event that plaintiff's Complaint survives judicial scrutiny under Rule 12(b)(6), F.R.C.P., plaintiff should be required to file a more definite statement pursuant to Rule 12(e), F.R.C.P., as much of plaintiff's Complaint is unintelligible.

WHEREFORE, defendant, Southeastern Pennsylvania Transportation Authority, respectfully requests that the Court dismiss plaintiff's Complaint with prejudice and enter an appropriate order for sanctions against Larry Hackney.

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